

## **IC 29-2-16**

### **Chapter 16. Uniform Anatomical Gift Act**

#### **IC 29-2-16-1**

##### **Definitions**

Sec. 1. Except where the context clearly indicates a different meaning, the terms used in this chapter shall be construed as follows:

(a) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited or approved under the laws of any state: includes a hospital operated by the United States government, a state or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "State" includes any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

*(Formerly: Acts 1969, c.166, s.1.) As amended by Acts 1982, P.L.171, SEC.79.*

#### **IC 29-2-16-2**

##### **Persons authorized to make gift**

Sec. 2. (a) Any individual:

- (1) of sound mind and eighteen (18) years of age or more; or
- (2) less than eighteen (18) years of age who obtains the consent of the individual's parent or guardian as required under IC 9-24-17-7;

may give all or any part of the individual's body for any purpose specified in section 3 of this chapter, the gift to take effect upon death. An individual may limit a gift made under this chapter or IC 9-24-17 to one (1) of the purposes specified in section 3 of this chapter. An individual may refuse to make a gift of all or part of the individual's body.

(b) Any of the following individuals, in order of priority stated when individuals in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 3 of this chapter:

- (1) the spouse;
- (2) a son or daughter, at least eighteen (18) years of age;
- (3) either parent;
- (4) a grandparent;
- (5) a brother or sister, at least eighteen (18) years of age; or
- (6) a guardian of the person of the decedent at the time of his death.

A gift made by an individual under this subsection may be revoked by an individual in the same or prior class as the individual making the gift, if the individual doing the removal of an organ receives notice of the revocation before the organ is removed. A failure to make a gift under this subsection is not an objection to the making of a gift, and an individual in a subsequent class may make a gift under this subsection.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The individuals authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 7(d) of this chapter. *(Formerly: Acts 1969, c.166, s.2; Acts 1973, P.L.287, SEC.14.) As amended by P.L.104-1991, SEC.9; P.L.1-1992, SEC.158; P.L.126-1995, SEC.4; P.L.135-1995, SEC.2; P.L.29-2000, SEC.6.*

## **IC 29-2-16-2.5**

### **Revocation of anatomical gift**

Sec. 2.5. (a) This section applies if:

- (1) a donor makes an anatomical gift in writing under section 2(a) of this chapter or IC 9-24-17; and
- (2) the gift is not revoked by:
  - (A) the donor before the donor's death; or
  - (B) a guardian under section 11 of this chapter.

(b) The individuals identified in section 2(b) of this chapter have no legal standing or authority to:

- (1) modify a deceased donor's gift of any part of the donor's body made in writing under section 2 of this chapter or IC 9-24-17; or
- (2) prevent the donor's anatomical gift from being made.

(c) This section does not limit the individuals identified in section 2(b) of this chapter from:

- (1) making a gift of all or any part of a decedent's body; or
- (2) revoking a gift of all or any part of a decedent's body;

as provided in section 2(b) of this chapter.

(d) Actual notice obtained by:

- (1) a recovery agency acting under section 3.5(a) of this chapter; or

(2) a hospital acting under section 3.5(b) of this chapter; of an individual's written anatomical gift that is made under section 2(a) of this chapter or IC 9-24-17 creates a rebuttable presumption that the individual made an anatomical gift for purposes of this section.

(e) Actual notice obtained by:

(1) a recovery agency acting under section 3.5(a) of this chapter; or

(2) a hospital acting under section 3.5(b) of this chapter; of an individual's written revocation of an anatomical gift that is made under section 2(a) of this chapter or IC 9-24-17 creates a rebuttable presumption that the individual revoked the anatomical gift for purposes of this section.

(f) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17.

*As added by P.L.130-2001, SEC.1.*

### **IC 29-2-16-3**

#### **Persons eligible to receive gifts**

Sec. 3. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon or physician for medical or dental education, research, advancement of medical or dental science, therapy or transplantation, or

(2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy, or

(3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation, or

(4) any specified individual for therapy or transplantation needed by him.

*(Formerly: Acts 1969, c.166, s.3.)*

### **IC 29-2-16-3.5**

#### **Recovery agent to determine if anatomical gift made**

Sec. 3.5. (a) If:

(1) a hospital's designated organ recovery agency determines that an individual whose death is imminent or who has died is medically suitable for organ donation;

(2) a hospital's designated organ recovery agency, in the absence of alternative arrangements by the hospital, and:

(A) using the standards of a potential tissue and eye donor;

(B) using the notification protocol developed by the hospital; and

(C) consulting with the hospital's designated tissue recovery agency and eye recovery agency;

determines that an individual whose death is imminent or who has died is medically suitable for tissue or eye donation;

(3) a hospital's designated tissue recovery agency determines that an individual whose death is imminent or who has died is medically suitable for tissue donation; or

(4) a hospital's designated eye tissue recovery agency determines that an individual whose death is imminent or who has died is medically suitable for eye donation;

the respective recovery agency shall attempt to ascertain whether the individual has made a written anatomical gift under section 2(a) of this chapter or under IC 9-24-17 and, if so, whether the individual has subsequently revoked the anatomical gift in writing. The recovery agency shall consult with the individuals identified in section 2(b) of this chapter who are reasonably available and may consult with any other sources that are available to the recovery agency.

(b) The recovery agency shall provide to the following any information obtained by the recovery agency under subsection (a):

(1) The hospital.

(2) The attending physician.

(3) The physician who certified the individual's death if there is not an attending physician.

(c) A recovery agency identified in subsection (a) may enter into a written agreement with a hospital to allow the hospital to ascertain whether an individual made a written anatomical gift under subsection 2(a) of this chapter or IC 9-24-17 and whether any subsequent written revocation of the anatomical gift occurred.

(d) The hospital shall provide to the following any information obtained by the hospital under subsection (c):

(1) The recovery agency.

(2) The attending physician.

(3) The physician who certified the individual's death if there is not an attending physician.

(e) A hospital or a recovery agency is immune from civil liability for determining in good faith and in compliance with this section that:

(1) an individual made a written anatomical gift; or

(2) an individual subsequently made a written revocation of an anatomical gift.

*As added by P.L.130-2001, SEC.2.*

#### **IC 29-2-16-4**

##### **Methods of making or refusing to make gift**

Sec. 4. (a) A gift of all or part of the body under section 2(a) of this chapter may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under section 2(a) of this chapter may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which

may be a card designed to be carried on the person, must be signed by the donor. Except as provided in IC 9-24-17-8, if the donor cannot sign, the document may be signed by another for the donor:

- (1) at the donor's direction and in the donor's presence; and
- (2) in the presence of two (2) witnesses who must sign the document in the donor's presence and each other's presence.

The document must state that it has been signed in accordance with this subsection. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The gift of an eye or part of an eye made without specifying a donee, or made to a donee who is not available at the time and place of death and without an expression of a contrary desire, may be accepted by the attending physician as donee on behalf of an eye bank in Indiana. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding section 7(b) of this chapter, the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) After proper certification of death by a physician and compliance with the intent of the gift as determined by reference to this chapter:

- (1) with respect to a gift of an eye or part of an eye, including the cornea or corneal tissue, the eye or part of the eye may be removed for the gift by:

- (A) a physician licensed under IC 25-22.5; or
- (B) an individual who is registered with the medical licensing board as a corneal excision technician; or

- (2) with respect to a gift of a whole eye, the eye may be removed for the gift by:

- (A) a physician licensed under IC 25-22.5;
- (B) an individual who is registered with the medical licensing board as a corneal excision technician;
- (C) an embalmer or a funeral director who, before September 1, 1983, completed a course in eye enucleation and was certified as competent to enucleate eyes by an accredited school of medicine; or
- (D) an individual who is registered with the medical licensing board as an eye enucleator.

(f) A person who, in good faith reliance upon a will, card, or other document of gift, and without actual notice of the amendment,

revocation, or invalidity of the will, card, or document:

- (1) takes possession of a decedent's body or performs or causes to be performed surgical operations upon a decedent's body; or
- (2) removes or causes to be removed organs, tissues, or other parts from a decedent's body;

is not liable in damages in any civil action brought against the donor for that act.

(g) Any gift by a person designated in section 2(b) of this chapter shall be made by a document signed by the donor or made by the donor's telegraphic, recorded telephonic, or other recorded message.

(h) An individual may refuse to make a gift under this chapter or IC 9-24-17 of all or part of the individual's body by any of the following methods:

- (1) A writing signed in the same manner as a document under subsection (b).
- (2) Any writing used to identify the individual as refusing to make an anatomical gift under this chapter.

During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(i) In the absence of a contrary indication by an individual, a gift under this chapter of a part of the individual's body is neither a refusal to give other parts of the body nor a limitation to give only part of the body under this chapter or IC 9-24-17.

(j) In the absence of a contrary indication by an individual, a revocation or an amendment under section 6 of this chapter is not a refusal to make another gift under this chapter. If an individual intends a revocation to be a refusal to make a gift under this chapter, the individual must make the refusal in accordance with subsection (h).

(k) A gift under this chapter or IC 9-24-17 that is not revoked before the donor dies is irrevocable.

(l) Revocation, suspension, or cancellation of the license or expiration of the license or identification card does not invalidate the anatomical gift.

(m) An anatomical gift is valid if the person acknowledges the making of the anatomical gift by signing an application form for a driver's license or an identification card under IC 9-24-17-8. No other acknowledgment is required to make an anatomical gift.

*(Formerly: Acts 1969, c.166, s.4; Acts 1975, P.L.291, SEC.1.) As amended by P.L.276-1983, SEC.1; P.L.246-1985, SEC.19; P.L.2-1992, SEC.789; P.L.36-1993, SEC.4; P.L.126-1995, SEC.5; P.L.135-1995, SEC.3; P.L.29-2000, SEC.7; P.L.94-2002, SEC.4.*

#### **IC 29-2-16-4.5**

##### **Conditions for release and removal of body part by coroner or medical examiner**

Sec. 4.5. (a) A coroner may release and permit the removal of a part from a body within the coroner's custody, for transplantation or therapy only, if all of the following occur:

- (1) The coroner receives a request for a part from a hospital,

physician, surgeon, or procurement organization.

(2) The coroner makes a reasonable effort, taking into account the useful life of a part, to locate and examine the decedent's medical records and inform individuals listed in section 2(b) of this chapter of their option to make or object to making a gift under this chapter.

(3) The coroner does not know of a refusal or contrary indication by the decedent or an objection by an individual having priority to act as listed in section 2(b) of this chapter.

(4) The removal will be by:

(A) a physician licensed under IC 25-22.5; or

(B) in the case of removal of an eye or part of an eye, by an individual described in section 4(e) of this chapter and under IC 36-2-14-19.

(5) The removal will not interfere with any autopsy or investigation.

(6) The removal will be in accordance with accepted medical standards.

(7) Cosmetic restoration will be done, if appropriate.

(b) If the body is not within the custody of the coroner, the medical examiner may release and permit the removal of any part from a body in the medical examiner's custody for transplantation or therapy if the requirements of subsection (a) are met.

(c) A person under this section who releases or permits the removal of a part shall maintain a permanent record of the name of the decedent, the individual making the request, the date and purpose of the request, the body part requested, and the person to whom it was released.

*As added by P.L.126-1995, SEC.6 and P.L.135-1995, SEC.4.  
Amended by P.L.130-2001, SEC.3.*

#### **IC 29-2-16-5**

##### **Delivery of document of gift**

Sec. 5. If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

*(Formerly: Acts 1969, c.166, s.5.)*

#### **IC 29-2-16-6**

##### **Amendment or revocation of document of gift**

Sec. 6. (a) If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement,  
or

(2) an oral statement made in the presence of two (2) persons and communicated to the donee, or

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a), or by destruction, cancellation or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

*(Formerly: Acts 1969, c.166, s.6.)*

### **IC 29-2-16-7**

#### **Rights and duties of donee**

Sec. 7. (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certified the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this chapter or with the anatomical gift laws of another state (or a foreign country) is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this chapter are subject to the laws of this state prescribing powers and duties with respect to autopsies.

*(Formerly: Acts 1969, c.166, s.7.) As amended by Acts 1982, P.L.171, SEC.80.*

### **IC 29-2-16-7.5**

#### **Probate court determination of whether anatomical gift made**

Sec. 7.5. (a) The individual's attending physician, or, if none, the:

(1) physician that certifies the individual's death;

(2) hospital where the individual is admitted;

(3) hospital where the individual's remains are being kept; or

(4) individual identified in section 2(b) of this chapter;

may petition the probate court in the county where the remains of the individual who is the subject to the petition are located, or the county in which the individual died, for the information referred to in



subsection (b).

(b) A person identified in subsection (a) may petition the probate court specified in subsection (a) to determine whether the individual:

(1) made a written anatomical gift under section 2(a) of this chapter or IC 9-24-17, for purposes of section 2.5 of this chapter; or

(2) made a written revocation of an anatomical gift under section 2(a) of this chapter or under IC 9-24-17, for purposes of section 2.5 of this chapter.

(c) If the probate court determines under subsection (b) of this chapter that the individual made a written anatomical gift that was not subsequently revoked in writing by the individual, the court shall order that the anatomical gift of an organ, tissue, or an eye be recovered.

(d) The probate court may modify or waive notice and a hearing if the court determines that a delay would have a serious adverse effect on:

(1) the medical viability of the individual; or

(2) the viability of the individual's anatomical gift of an organ, tissue, or an eye.

*As added by P.L.130-2001, SEC.4.*

## **IC 29-2-16-8**

### **Uniformity of construction**

Sec. 8. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

*(Formerly: Acts 1969, c.166, s.8.) As amended by Acts 1982, P.L.171, SEC.81.*

## **IC 29-2-16-9**

### **Short title**

Sec. 9. This chapter may be cited as the "Uniform Anatomical Gift Act."

*(Formerly: Acts 1969, c.166, s.10.) As amended by Acts 1982, P.L.171, SEC.82.*

## **IC 29-2-16-10**

### **Duty to inform of donor options**

Sec. 10. (a) As used in this section:

"Administrator" means a hospital administrator or a hospital administrator's designee.

"Gift" means a gift of all or any part of the human body made under this chapter.

"Representative" means a person who is:

(1) authorized under section 2(b) of this chapter to make a gift on behalf of a decedent; and

(2) available at the time of the decedent's death when members of a prior class under section 2(b) of this chapter are unavailable.

(b) An administrator of each hospital or the administrator's designee may ask each patient who is at least eighteen (18) years of age if the patient is an organ or a tissue donor or if the patient desires to become an organ or a tissue donor.

(c) The governing board of each hospital shall adopt procedures to determine under what circumstances an administrator or an administrator's designee may ask a patient if the patient is an organ or a tissue donor or if the patient desires to become an organ or a tissue donor.

(d) The administrator shall inform the representative of the procedures available under this chapter for making a gift whenever:

- (1) an individual dies in a hospital;
- (2) the hospital has not been notified that a gift has been authorized under section 2 of this chapter; and
- (3) a physician determines that the individual's body may be suitable of yielding a gift.

(e) If:

- (1) an individual makes an anatomical gift on the individual driver's license or identification card under IC 9-24-17; and
- (2) the individual dies;

the person in possession of the individual driver's license or identification card shall immediately produce the driver's license or identification card for examination upon request, as provided in section 5 of this chapter.

(f) A gift made in response to information provided under this section must be documented as described under section 4(g) of this chapter.

(g) When a representative is informed under this section about the procedures available for making a gift, the fact that the representative was so informed must be noted in the decedent's medical record.

(h) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but may be subject to administrative sanctions.

*As added by P.L.173-1986, SEC.1. Amended by P.L.286-1987, SEC.1; P.L.2-1991, SEC.91; P.L.36-1993, SEC.5; P.L.126-1995, SEC.7; P.L.135-1995, SEC.5; P.L.29-2000, SEC.8.*

## **IC 29-2-16-11**

### **Revocable or amendable gifts; election; authorized persons**

Sec. 11. (a) An individual may elect to make a gift under section 2(a) of this chapter revocable or amendable only by the following:

- (1) The individual.
- (2) A guardian appointed for the individual under IC 29-3 if the individual becomes incapacitated.

(b) If an individual makes an election under this section, the gift made by the individual under section 2(a) of this chapter may be revoked or amended only by one (1) of the following:

- (1) The individual.
- (2) A guardian appointed for the individual under IC 29-3 if the individual becomes incapacitated.

(c) An election under this section may be made by one (1) of the following methods:

(1) Making a statement that incorporates this section by:

(A) reference; or

(B) language that is substantially similar to subsection (a); in a will or other document that makes a gift under section 2(a) of this chapter.

(2) Indicating an election under this section on a form that makes a gift under section 2(a) of this chapter.

*As added by P.L.104-1991, SEC.10.*

#### **IC 29-2-16-12**

##### **Donation costs**

Sec. 12. A person authorized to make a gift under section 2 of this chapter may not be charged for the costs related to a donation. The recipient of the gift is responsible for the costs related to the donation.

*As added by P.L.131-1992, SEC.1.*

#### **IC 29-2-16-13**

##### **Hospital's duty to notify donee or procurement organization of gift**

Sec. 13. If, at or near the time of death of a patient, a hospital knows that a gift has been or will be made under this chapter or a release and removal of a part has been permitted under section 4.5 of this chapter, or that a patient or an individual in transit to the hospital is identified as a donor, the hospital shall notify the donee if a donee is named and known to the hospital. If a donee is not known to the hospital, the hospital shall notify a procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

*As added by P.L.126-1995, SEC.8 and P.L.135-1995, SEC.6.*

#### **IC 29-2-16-14**

##### **Duty to identify donor**

Sec. 14. (a) The following persons shall make a reasonable search for information identifying the bearer as an organ or a tissue donor or as an individual who has refused to make a gift under this chapter:

(1) A law enforcement officer, paramedic, or other emergency rescuer finding an individual who the searcher believes is dead or near death.

(2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of information regarding a gift or refusal to make a gift under this chapter.

(b) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (a), and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents of the document or refusal and the document or other evidence must be sent to the hospital.

*As added by P.L.126-1995, SEC.9 and P.L.135-1995, SEC.7.*

#### **IC 29-2-16-15**

##### **Coordination for procurement and use of gifts**

Sec. 15. Every hospital in Indiana, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

*As added by P.L.126-1995, SEC.10 and P.L.135-1995, SEC.8.*

#### **IC 29-2-16-16**

##### **Violations**

Sec. 16. (a) A person who knowingly or intentionally purchases or sells a part for transplantation or therapy, if removal of the body part is to occur after the death of an individual, commits a Class C felony.

(b) This section does not apply to reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

*As added by P.L.126-1995, SEC.11 and P.L.135-1995, SEC.9.*